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14 UNITED STATES DISTRICT COURT
15 FOR THE NORTHERN DISTRICT OF CALIFORNIA
16 SAN JOSE DIVISION

17 APPLE INC., a California corporation,
18 Plaintiff,

19 v.

20 DEFENDANTS CORPORATION, a
21 California corporation; ACCSTATION INC.,
22 a California corporation; ITRIMMING INC., a
23 California corporation;
24 EVERYDAYSOURCE INC., a California
25 corporation; UNITED INTEGRAL INC., a
26 California corporation; CRAZYONDIGITAL,
27 INC., a California corporation; and
28 BOXWAVE CORPORATION, a Nevada
corporation; and DOES 1 through 20,
inclusive,
Defendants.

Civil Action No. CV10-03216 JF (HRL)

**APPLE INC.'S OPPOSITION TO
DEFENDANTS' MOTION TO DISMISS
CLAIMS FOR RELIEF 1-10 OF
PLAINTIFF'S COMPLAINT**

DATE: April 1, 2011
TIME: 9:00 a.m.
PLACE: Courtroom 3



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Plaintiff Apple Inc. (“Apple”) opposes Defendants eForCity Corporation, Accstation Inc., Itrimming Inc. and Everydaysource Inc.’s (collectively “Eforcity”) Motion to Dismiss Claims for Relief 1-10 of Plaintiff’s Complaint (ECF No. 47) as follows.¹

I. INTRODUCTION

Contrary to Eforcity’s unsupported assertions, Apple’s complaint contains more than sufficient facts regarding Eforcity’s infringement of both Apple’s utility and design patents. Each of the challenged claims for relief (1-10) not only meets, but exceeds, the pleading requirements of Federal Rule of Civil Procedure 8. The relevant case law establishes that a patent infringement plaintiff must plead at least the following elements to withstand a challenge to the complaint under Rule 12(b)(6): (1) the patent(s) alleged to be infringed; (2) ownership of the patent(s); (3) identification of the defendant(s); (4) the infringing apparatus, process or other instrumentality; and (5) the specific sections of the patent law invoked.

Here, in addition to the five required elements recited above, Apple’s complaint went further and also identified specific infringing products and asserted patent claims. Other than broad statements regarding pleading requirements generally, Eforcity cites to no legal authority that would demonstrate that Apple’s complaint is in any way deficient. As Eforcity acknowledges, the Patent Local Rules of this District set forth the mechanism and timing for disclosure of asserted patent claims and infringement contentions. *See* Patent L.R. 3-1. There is no requirement in this District or elsewhere that detailed contentions must be alleged in the complaint.

Because Apple has met the pleading requirements of Rule 8 and has otherwise stated claims for relief under Rule 12(b)(6), Eforcity’s motion should be denied.

II. ARGUMENT

A. Pleading Requirements for Patent Infringement Cases

“[A] patentee need only plead facts sufficient to place the alleged infringer on notice.” *Phonometrics, Inc. v. Hospitality Franchise Sys., Inc.*, 203 F.3d 790, 794 (Fed. Cir. 2000). A

¹ Defendants eForCity Corporation, Accstation Inc., Itrimming Inc. and Everydaysource Inc. are related companies, owned and operated by Jack Sheng out of his El Monte, California office. *See generally* ECF No. 48.



1 complaint is sufficient if it:

2 . . . alleges ownership of the asserted patent, names each individual
3 defendant, cites the patent that is allegedly infringed, describes the
4 means by which the defendants allegedly infringe, and points to the
specific sections of the patent law invoked. . . . Rule 12(b)(6) requires
no more.

5 *Id.* This basic pleading requirement was not altered by the Supreme Court’s decision in *Bell*
6 *Atlantic Corp. v. Twombly*, 550 U.S. 544 (2007) (holding, in an antitrust action, “Factual
7 allegations must be enough to raise a right to relief above the speculative level”). *See McZeal v.*
8 *Sprint Nextel Corp.*, 501 F.3d 1354, 1357 (Fed. Cir. 2007) (relying, after *Twombly*, on
9 *Phonometrics* and finding sufficient a *pro se* complaint that included the elements recited in
10 *Phonometrics*).²

11 A patent plaintiff is not required to allege in the complaint that the defendant infringes any
12 specific claim or claims of a patent. The Federal Circuit specifically found sufficient a complaint
13 that asserted that the accused product “falls within the scope of one or more claims of [the asserted
14 patent].” *McZeal*, 501 F.3d at 1357. Other courts, including this District, have confirmed this
15 pleading standard after the Supreme Court decided both *Twombly* and *Ashcroft v. Iqbal*, 129 S. Ct.
16 1937, 1949, 556 U.S. ___ (2009) (holding, in a 1st and 5th Amendment action, that “a complaint
17 must contain sufficient factual matter . . . to ‘state a claim to relief that is plausible on its face’”).
18 *See e.g., Ardente, Inc. v. Shanley*, No. 3:07-cv-04479-MHP, 2010 U.S. Dist. LEXIS 11674, *17-
19 18 n. 6 (N.D. Cal. Feb. 10, 2010) (court found complaint adequate even though plaintiff did not
20 allege which claims of the asserted patent it contended were infringed, noting: “The court is
21 unaware of any case holding that the Supreme Court’s decisions in *Twombly* and *Iqbal* have now
22 resulted in a strict requirement that a patent infringement plaintiff plead the specific claims
23 believed to have been infringed.”); *Kilopass Tech. Inc. v. Sidense Corp.*, No. C 10-2066 SI, 2010
24 WL 5141843 *3-*4 and n. 1 (N.D. Cal. Dec. 13, 2010) (court cited *Iqbal* and *Twombly*, but
25 required only the *Phonometrics* elements and noted “cases . . . have not required plaintiffs to
26 identify patent claims in the pleadings”); *Vellata, LLC v. Best Buy Co., Inc.*, No. CV 10-6752

27 ² The *McZeal* opinion specifically notes that a *pro se* litigant may be given leeway as to
28 pleading requirements. *McZeal*, 501 F.3d at 1356. But the court gave no indication that a
complaint drafted by lawyers must include additional elements.



AHM (RCx), 2011 WL 61620 *1, *2, *4 (C.D. Cal. Jan. 7, 2011) (complaint alleging that defendants' "actions infringe at least one of the claims of the [asserted] patent" held sufficient to state a claim for relief); *see also Every Penny Counts, Inc. v. Bank of Am. Corp.*, No. 2:07-cv-42-FtM-29SPC, 2007 WL 4247790 *2 (M.D. Fla. Nov. 30, 2007) (court found sufficient a complaint that alleged infringement of "at least one claim of the [asserted] patent").

B. Apple's Complaint Exceeds the Pleading Requirements for Each Asserted Patent

Each of Apple's ten claims of patent infringement meets the pleading requirements set forth in *Phonometrics*. Each claim alleges ownership. Complaint, ¶¶ 32, 37, 42, 47, 52, 57, 62, 67, 72, 77. Each claim identifies the patent alleged to be infringed. *Id.* Each claim names each individual defendant. *Id.* at ¶¶ 33, 38, 43, 48, 53, 58, 63, 68, 73, 78. Each claim points to the specific sections of the patent law invoked by alleging that the defendants "directly infringe" through "manufacture, use, sale, importation and/or offer for sale" that falls only under 35 U.S.C. § 271(a). *Id.* And each claim points to the means by which defendants infringe. *Id.*³ These facts alone are sufficient to deny Eforcity's motion. However, Apple's complaint went further and alleged both specific infringing products and representative claims for each of the subject patents.⁴

Apple's first through seventh claims for relief assert infringement of various patents. With respect to each of these claims, Apple identified at least one specific claim that is allegedly infringed by the accused products. *Id.* at ¶¶ 33, 38, 43, 48, 53, 58, 63, 68, 73, 78. Apple also specifically identified multiple products that infringe each patent. *Id.* Due to the multitude of products that infringe the various patents, and for ease of reference, Apple categorized and listed the infringing products in a single paragraph for each defendant. *Id.* at ¶¶ 23-27. Paragraphs 33, 38, 43, 48, 53, and 58 refer back to paragraphs 23-27, while paragraphs 63, 68, 73, and 78 refer directly to product numbers. *Id.* For example, paragraph 43 refers to "the specific cradles and FM

³ Paragraphs 33, 38, 43, 48, 53, and 58 refer back to the specific products identified in paragraphs 23 through 29 by making reference to certain categories of products "identified above with respect to each of said Defendants."

⁴ Unlike utility patents, design patents contain only a single claim. Thus, identification of a design patent necessarily identifies the sole claim as the asserted claim.



transmitters identified above with respect to each of said Defendants” and paragraphs 23-27 list specific product numbers within the “cradle” and “FM transmitter” categories. *Id.* By alleging these additional facts, Apple not only met, but exceeded, the pleading requirements of Rule 8 with respect to the utility patents.

Eforcity argues, with respect to Apple’s first claim for relief, that Apple “has also provided no explanation of the invention claimed in the ‘343 patent.” Motion p. 4, lines 7-9. This attempt to create an entirely new pleading requirement should be rejected. Apple is not aware of, and Eforcity does not cite, any authority for the proposition that such a description is required.

In its eighth through tenth claims for relief, Apple alleged infringement of three of its design patents. Complaint, ¶¶ 66-80. For each of these claims, Apple pled the five *Phonometrics* elements for each asserted design patent. Eforcity, however, suggests – without citation to relevant authority – that Apple should have gone further and was required to provide a “description of the design claimed in th[e asserted] design patents.” Motion p. 9, lines 19-20. Rules 8 and 12(b)(6) include no such requirement. In fact, the Federal Circuit, *en banc*, specifically cautioned courts (and, by extension, parties) against attempting to “describe a design in words”:

Given the recognized difficulties entailed in trying to describe a design in words, the preferable course ordinarily will be for a district court not to attempt to ‘construe’ a design patent claim by providing a detailed verbal description of the claimed design.

Egyptian Goddess, Inc. v. Swisa, Inc. 543 F.3d 665, 679 (Fed. Cir. 2008) (*en banc*).

Even though the claimed design need not be described by Apple, each design patent provides Eforcity ample guidance as to the asserted rights. Eforcity knows the asserted claim, because each asserted design patent contains only a single claim. 37 C.F.R. § 1.153(a) (“More than one claim [in a design patent] is neither required nor permitted.”); *see also* “Claim” sections of asserted design patents at Complaint, Ex. H p. 1, Ex. I p. 2, and Ex. J p. 1. Each design patent claims a design “as shown and described.” *Id.* This is all that is required, and Eforcity does not cite to any authority to the contrary. There certainly is no authority for the proposition that a patent plaintiff is compelled to describe in words the claimed invention of design patents in order



1 to meet its pleading requirements. Apple also identified specific products that infringe the design
 2 patents. Complaint, ¶¶ 68, 73, 78. Accordingly, because Apple's design patent infringement
 3 claims are properly pled, Eforcity's motion with respect to these claims should be denied.

4 **C. Eforcity's Cited Authority is Inapposite**

5 Each of the cases cited by Eforcity in support of the motion is inapposite and easily
 6 distinguishable from the issues presented here.

7 In *Interval*, the plaintiff did not "indicate with any specificity which of Defendants'
 8 products or devices infringe the patents." *Interval Licensing LLC v. AOL, Inc.*, No. C10-1385
 9 MJP, 2010 WL 5058620 *1 (W.D. Wa. Dec. 10, 2010) (finding "Plaintiff's complaint here fails to
 10 identify the purportedly infringing products with any reasonable specificity"). Here, Apple
 11 identified between 2 and 34 specific products that infringe each asserted patent. Complaint, ¶¶ 33,
 12 38, 43, 48, 53, 58, 63, 68, 73, 78. Apple identified accused products both by specific product
 13 number and product type. *Id.*

14 In *Bender*, the plaintiff provided lists of categories of allegedly infringing products but
 15 "fail[ed] to identify any single product by name or number." *Bender v. LG Electronics U.S.A.,*
 16 *Inc.*, No. C 09-02114 JF (PVT), 2010 WL 889541 *2 (N.D. Cal. Mar. 11, 2010). As noted
 17 previously, that is not the case in Apple's complaint.

18 In *Elan*, the plaintiff asserted "direct[] and/or indirect infring[ement]" and relied on Rule
 19 11(b)(3) to support its allegations. *Elan Microelectronics Corp. v. Apple, Inc.*, No. C 09-01531
 20 RS, 2009 WL 2972374 at *2-3 (N.D. Cal. Sept. 14, 2009). The Court found that plaintiff was
 21 "only saying 'there may or may not be infringement'" or was conveying that it "believes there is
 22 infringement . . . but needs discovery to gather evidentiary support for the contention." *Id.* at *4.
 23 Here, Apple unambiguously asserted direct infringement, has not alleged indirect infringement,
 24 and does not rely on Rule 11(b)(3). Complaint, ¶¶ 33, 38, 43, 48, 53, 58, 63, 68, 73, 78.

25 In *Johnson*, the plaintiff did not identify the number of the asserted design patent (though
 26 the court was able to ascertain the number) and the complaint only "vaguely allege[d] that Plaintiff
 27 has seen some of Defendants' clothes with [the alleged infringing design]." *Johnson v. Levi*
 28 *Strauss & Co.*, No. 3:08cv00461, 2009 WL 3600328 *3, *7 (S.D. Oh. Oct. 26, 2009). The



1 *Johnson* court found that either “more specific descriptions of [the] patented design or
 2 ornamentation” or “more specific description of the Defendants’ [accused product] lines or how
 3 Defendants’ [product] lines infringe” was necessary to state a claim for infringement. *Id.* at *7.
 4 Here, Apple identified specific design patents, specific infringing product lines, and at least two
 5 specific products within each line that infringe each design patent. Complaint, ¶¶ 68, 73, 78.
 6 Eforcity faces none of the ambiguity found in *Johnson*.

7 Because Eforcity did not cite any legal authority to support its bold contentions, the motion
 8 should be denied.

9 **D. The Patent Local Rules Specify the Appropriate Mechanism for Identifying**
 10 **Specific Products and Claims Alleged to Be Infringed**

11 This Court provides defendants with a means to obtain early, meaningful, detailed patent
 12 infringement contentions. The Patent Local Rule 3-1 disclosure, not the complaint, is the
 13 mechanism that will provide the highly detailed allegations that Eforcity seeks. As Eforcity
 14 acknowledges, Patent Local Rule 3-1 will require specific disclosures of infringement contentions
 15 early in this law suit. Motion p. 6, line 14. Apple will be required to identify “[e]ach claim of
 16 each patent in suit that is allegedly infringed by each opposing party” and “for each asserted claim,
 17 each accused apparatus, product, device, . . . of each opposing party of which [Apple] is aware.”
 18 Patent L.R. 3-1(a), (b). The Patent Local Rules “are designed to require parties to crystallize their
 19 theories of the case early in the litigation and to adhere to those theories once they have been
 20 disclosed.” *CBS Interactive, Inc. v. Etilize, Inc.*, 257 F.R.D. 195, 201 (N.D. Cal. 2009) (quoting
 21 *Integrated Circuit Sys., Inc. v. Realtek*, 308 F. Supp. 2d 1106, 1107 (N.D. Cal. 2004)). Apple will
 22 make such disclosures at the appropriate time, but is not required to do so in its complaint.

23 **E. Eforcity’s Reliance on Rule 11 Should be Rejected**

24 Eforcity’s apparent attempt to apply Rule 11 standards to a Rule 12 motion should be
 25 rejected. In the Motion, Eforcity suggests that “[d]ue to the particular circumstances of this case,
 26 the more stringent standard of Rule 11 . . . should be applied here.” Motion, p. 7, lines 2-3. This
 27 appears to be an attempt to morph the Rule 11 pre-filing investigation requirements into the
 28 requirements of Rule 8 or Rule 12. Rules 8 and 12, however, stand alone. Eforcity cites no



1 authority for the proposition that “the more stringent standard of Rule 11” should be applied here.

2 **F. Eforcity’s Motion is Improper Under Rule 12(g)**

3 In addition to denying Eforcity’s motion on the merits, Apple respectfully submits that the
 4 Court should deny Eforcity’s Motion as procedurally improper under Rule 12(g)(2). Rule
 5 12(g)(2) allows a party only one motion under Rule 12, outside of certain narrow exceptions. Fed.
 6 R. Civ. P. 12(g)(2) (“ . . . a party that makes a motion under this rule must not make another
 7 motion under this rule . . .”). Eforcity’s earlier-filed “First Motion to Strike Portions of Plaintiff’s
 8 Complaint” (ECF No. 46) was brought under Fed. R. Civ. P. 12(f). *See* ECF No. 46 at p. 2. Thus,
 9 this second motion (ECF No. 47) under Rule 12 is procedurally improper. Because this second
 10 motion is a violation of Rule 12(g), it should be denied on this ground as well.

11 **III. CONCLUSION**

12 For the foregoing reasons, Apple respectfully requests that Eforcity’s motion be denied.

13
 14 DATED: March 11, 2010

Respectfully submitted,

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